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EDITORIAL

WITH this, our first issue in 1949, we send greetings to all our readers and best wishes for a happy and prosperous New Year.

One of the first matters of special interest to the profession which will come before Parliament in 1949 is the Landlord and Tenant (Rent Control) Bill, introduced on the 17th December, 1948. In these columns we have pressed, and shall continue to press, for a general and systematic revision of Rent Control legislation, and in the circumstances we can only endorse the view expressed in *The Times* (22nd December) that this Bill "is another example of the makeshift legislation which has far too long been applied to the many varying problems of rent restriction." Of all the defects in the existing legislation only three are dealt with in the new Bill, and the main vehicle for carrying out these reforms is the Rent Tribunal constituted under the Furnished Houses (Rent Control) Act, 1946, which was itself a temporary expedient designed to endure only until 31st December, 1947.

Clause 9 of the Bill allows a Rent Tribunal to give additional security of tenure to a tenant of furnished premises. Under the Act of 1946 the Tribunal could extend the tenant's tenancy for one period of three months, and it is now proposed that further extensions for up to three months at a time should be given as often as the Tribunal thinks fit. There is little logic in a rule which gives a tenant of unfurnished premises security of tenure for life but limits that security to a mere three months if a substantial portion of the rent is attributable to furniture or attendance supplied by the landlord, and the proposed amendment will receive wide support. It is to be hoped that the Rent Tribunals will be in a position to deal with the tremendous increase in work which this and other provisions of the Bill will surely entail.

Clauses 6 and 7 aim to dispose of the rule in *Neale* v. *Del Soto* [1945] K.B. 144, and to give security of tenure to a tenant who shares the kitchen, or other essential living accommodation, with his landlord or others. If the sharing is with another tenant each tenant's holding will be a dwelling-house within the meaning of the Rent Acts and each tenant will have the full protection of those Acts. If the sharing is with the landlord the tenant is to remain outside the Rent Acts but his tenancy is brought within the Furnished Houses (Rent Control) Act, 1946, even if it is an unfurnished letting, and he can apply to the appropriate Rent Tribunal for successive extensions of his tenancy under cl. 9, to which we referred above.

The most controversial part of the Bill is that dealing with the fixing of standard rents, and with the return of premiums, in the case of lettings made after the 14th August, 1945. It is well known that when a new house, or one which has been so structurally altered as to lose its identity, is first let there is no restriction as far as the Rent Acts are concerned on the rent charged on the first letting, and that rent becomes the standard rent. This was no oversight on the part of Parliament because the same principle was to be seen in the earlier Rent Acts, under which houses constructed or reconstructed after 1919 were free from all control. The principle, no doubt, was that, by freeing new houses from control, building would be encouraged and the need for general control alleviated. Under the new Bill power is given to Rent Tribunals to fix new standard rents for these previously uncontrolled lettings and the tenant is given a right, which cannot be controlled by the Tribunal, to have the major part of any premium paid on the grant of such a tenancy returned to him in the form of a reduction of rent. It is interesting to consider some of the consequences which will flow from the Bill if it is passed into law in its present form.

In the first place the Rent Tribunal, designed to provide summary justice without appeal during a short period of emergency, will be in a position to fix a standard rent binding the property *in rem* for as long as the Rent Acts themselves remain in force. Once so fixed there is no power in the Tribunal or the courts to alter it. The fixed and unalterable character of the standard rent has always been a feature of Rent Restrictions legislation, but it has previously been determined by reference to a freely negotiated agreement and not by judicial authority.

Another new principle is that of retrospective operation. The new Bill will affect thousands of tenancies created during the last three years by parties who were aware of their rights under the existing Acts and made their arrangements with their eyes open. More startling still is the fact that it makes no distinction between premiums which were lawfully paid on the grant of a lease for fourteen years or more and those which were illegally exacted in defiance of the existing Acts. Nor does it deal with the position of a landlord who, having taken a premium in 1947, and subsequently assigned the reversion, leaves the new landlord liable to disgorge a premium which he never received.

We hope in a later issue to deal with a number of minor matters which are urgently in need of correction and with which the Bill does not deal at all.

CURRENT TOPICS

Law Society's Provincial Meeting, 1949

BLACKPOOL is the holiday resort chosen for The Law Society's provincial meeting to be held from Tuesday, 20th September, to Friday, 23rd September, 1949. The commencement of the meeting on Tuesday instead of Monday, as at Brighton last year, it is felt, will be welcomed, because it will leave the week-end free for a golf competition and other engagements and will also enable those attending to return home at leisure instead of feeling that they should make an effort to be in their offices on the Friday. It had been hoped, the December *Law Society's Gazette* states, to arrange the meeting for a week later, so as to avoid its clashing with the reopening of schools—a time of great activity for most parents. Unfortunately, however, difficulties in reserving hotel accommodation in Blackpool have made this further change impossible for 1949, although every effort will be made to make it for subsequent years.

Town and Country Planning Act, 1947: Time Limit extended for Claims and Valuations

THE Central Land Board have announced that the time limit for putting in claims on the £300 million fund set aside under the Town and Country Planning Act, 1947, has been extended to the 30th June, 1949. Previously the time limit was the 31st March, 1949, the Board having power to extend until the 30th June in individual cases. The extension now becomes general for all claimants and a regulation to that effect has been made. The Board emphasise that under this new regulation there is no power to extend the time beyond 30th June, 1949. The Board have also announced that claimants can employ professional advice, and still claim from the Board a contribution towards the fees incurred, up to 31st October, 1949. S.1 *must*, however, be sent to the Board's office by the 30th June, 1949, complete except for the optional questions 26, 27 and 28, together with a slip attached to the claim form and bearing the words " I/We have been retained by the claimant to complete the valuation questions by 31st October, 1949 " ; the professional adviser's signature ; and the name and address of his firm. The professional adviser will then be sent a replica of the " Optional Part of Form," with the Board's registration number, for completion and return by 31st October, 1949.

" Precautionary " S.1 Claims

IT is understood that the Central Land Board will shortly make announcements on the submission of " precautionary " S.1 claim forms (and the position with regard to professional fees) where owners of land have applied before 30th June, 1949, to the Minister of Town and Country Planning for certificates under s. 80 (1) (dead-ripe land) ; or for determinations under s. 92 (1) or s. 85 (5) that their land comes or should come within s. 85 (functional land held by a charitable body). These announcements will provide that questions 1, 2 and 3 need only be answered in the first instance.

Public Companies: Annual Returns and Lists of Members

THE Board of Trade have issued a reminder that every company which holds an annual general meeting after 31st December, 1948, will be required to include a list of members in its annual return. This follows from the expiry on that date of reg. 3 (1) of the Defence (Companies) Regulations, which exempted public companies from this requirement. The Board of Trade add, however, that in the first annual return so made there need not be included either particulars as to past members or transfers of shares by existing members since the date of the last return.

Clients' Account

THE Council of The Law Society draw the attention of members, in the December, 1948, issue of the *Law Society's Gazette*, to the fact that in a number of cases solicitors have paid clients' money into deposit accounts with building societies, insurance companies, reversionary societies and other bodies which have not the status of banks, or transferred clients' money from client accounts into deposit accounts of such bodies. The Council point out that it may not be generally understood that such payments or transfers, unless covered by r. 9 of the Solicitors' Accounts Rules, 1945, constitute a breach of r. 3. By r. 3, subject to the provisions of r. 9, every solicitor who holds or receives clients' money or money which under r. 4 he is permitted and elects to pay into a client account shall without delay pay such money into a client account. The expression " client account," according to r. 2, means a current or deposit account at a bank in the name of the solicitor, in the title of which the word " client " appears.

Juries Bill

THE text of the Juries Bill was published on 17th December, 1948. When it becomes law it will mitigate an old injustice by providing for the payment, from the 1st October, 1949, to jurors in respect of jury service in England and Wales and in Scotland of allowances for travelling and subsistence, and compensation for loss of earnings or additional expense necessarily incurred by service (cll. 1 and 22). Compensation for loss of earnings or additional expense may not exceed for any one day of service the sum of 10s. where the period of time over which earnings are lost or additional expenses incurred is not more than four hours, or 20s. where the period is more than four hours. In England and Wales the cost of payments to jurors in respect of criminal business at assizes and quarter sessions will fall upon local authorities ; and in respect of civil business in the High Court, at assizes, in the county courts, and before sheriffs' juries will fall on the Exchequer (cll. 3, 4, 5 and 11). In the case of courts exercising local civil jurisdiction, e.g., the Liverpool Court of Passage and the Salford Hundred Court, the cost will fall on the local authority responsible for maintaining these courts (cl. 3 (6)). It is estimated that the total gross cost to the Exchequer would be in the neighbourhood of £60,000 a year, and to local authorities about £132,000 a year. Clauses 17 and 18 abolish special juries with a saving for City of London special juries in commercial cases. It is of historical interest that the Bill expressly does not apply to service on a jury summoned—(*a*) for the purposes of an inquest held by the coroner of His Majesty's household ; (*b*) for the purposes of a trial of the pyx under s. 12 of the Coinage Act, 1870 ; (*c*) for attendance at the Great or Small Barmote Court for the Hundred of High Peak or the Soke and Wapentake of Wirksworth or a great or small barmote court for any of the manors or libertjes mentioned in ss. 12 to 15 of the Derbyshire Mining Customs and Mineral Courts Act, 1852 ; or (*d*) for attendance at a hundred court (other than the Salford Hundred Court of Record) or at a court baron, court leet, law day, view of frankpledge or other like court.

War Damage to Public Utilities

THE promise made in 1941 that war damage to public utilities would be made the subject of separate legislation has been fulfilled by the presentation to Parliament of the War Damage (Public Utility Undertakings, etc.) Bill, the text of which was published on 18th December. War damage payments to public utilities are estimated at £62,000,000. Public utility undertakings are defined as statutory undertakings concerned with railways, canals, harbours, docks, gas, electricity, water, sewerage and lighthouses. Contributions are to be made towards the expense of making the payments, and they are to be treated for all purposes as capital outgoings. The undertakings are divided into eight groups, and payments are to be made as follows: railways group, £34,894,956 ; canal group, £509,471 ; harbour group, £28,735,184 ; gas group, £12,211,142 ; electricity group, £9,663,194 ; water group, £2,006,016 ; sewerage group, £2,958,864 ; lighthouse group, £336,853. The principal charge on the Exchequer is a net charge of about £62,000,000 in respect of payments to public utilities. The gross amount of payments is over £91,000,000, but this would be reduced by contributions and amounts setting off payments already made.

TOWN AND COUNTRY PLANNING ACT, 1947

CLAIMS FOR DEPRECIATION OF LAND VALUES

In his speech to the Town and Country Planning Association on 15th November, Sir Malcolm Trustram Eve, K.C., revealed that, up to that time, for the whole of Great Britain only 12,004 claims for depreciation of land value under Pt. VI of the Town and Country Planning Act, 1947, had been received. The lack of action thus displayed may be due either to the dispiriting effect of the numerous forecasts that only a pittance will be received by individual claimants by way of dividend out of the global fund, or because owners and their advisers are in genuine doubt as to what their position really is. If owners have a claim which can be substantiated, they should put it in as soon as possible in spite of the recent extension of the time-limit from 31st March to 30th June, 1949 (see p. 2 of this issue), and not be deterred by the possibility that only a small portion of the claim may be received.

It seems likely, however, that many owners and advisers are in genuine doubt as to what they should do, and a correspondent has given two cases, as examples, where he feels advice would be welcome. These two examples are as follows :—

(1) The existing use value of a vacant plot in the middle of London or Manchester is presumably nil, ignoring any saving provisions in the Act for war damage sites, etc. Is the owner to sell it for a nominal figure and rely on anything he can get from the £300,000,000 fund and make his claim accordingly putting in " existing use value " as nil ?

(2) A man owns a house with, say, two acres adjoining used as a garden. These two acres before the Act were worth, say, £600 an acre as building land—their " existing use value " may be, say, anything from £40 to £100. Is the owner to put in a claim for compensation from the fund, giving pre-Act value as £600 an acre and " existing use value " as £100 an acre, or would he be better advised to leave things as they are ?

It is not intended in this article to trespass on questions of valuation which are primarily a matter for another profession, but it is obviously necessary that readers should be aware of the basic issues involved as it will often be their lot to advise clients whether or not a valuer should be instructed.

The first example given above is a case where immediate steps should be taken to submit a depreciation claim unless completion of the sale is to take place well before the 30th June next, and the claim to be assigned to the purchaser, a practice frowned on, as readers will be aware, by the Central Land Board, when the purchaser might be left to bear the trouble and expense of claiming. There is clearly a large amount of money involved and it is pre-eminently a case in which a professional valuer should be instructed. It may be doubted whether the existing use value is nil, but it will undoubtedly be nominal compared with the development value. The submission of a claim does not affect the subsequent sale of the land or the price at which it is sold. There is nothing to prevent the owner's selling at the best price he can get so long as he makes it quite clear to the prospective purchaser that the development value is not included. In theory the land should be sold at its nominal value and the Central Land Board may intervene with their powers of compulsory purchase if it is sold above, but, in the current state of the market, if the land were to be put up to auction it seems likely it would be sold well above the nominal value despite all the warnings the vendor might give.

In the second case, without a knowledge of the whole facts and inspection of the site, it is difficult to give any advice. Some land would necessarily have to be retained with the house and in calculating the development value of the remainder a deduction has to be made for severance and injurious affection caused to the house and retained land (s. 61 (6)). Dependent on the size and character of the house and its siting in the two acres and the character of the neighbourhood it might or might not be worth while to make a claim. Would the value of the house be depreciated by, say, £800 if the greater part of its existing garden were sold off for building ?

In considering the position the reader should bear in mind s. 63 of the Act which excludes small claims where the development value is £20 or less per acre or is one-tenth or less of the existing use value. These limits are very low indeed. It should also be borne in mind that the Central Land Board are prepared to make a substantial contribution to professional valuers' fees, if, but only if, the optional questions at the end of Form S.1 are completed by a valuer (but see p. 2 of this issue as to valuations not completed by 30th June, 1949). The scale of contribution is set out in App. I to the Board's pamphlet S.1A.

Another case which seems to cause difficulty is that in which there is clearly considerable loss of development value, but in fact the owner has no present intention of developing, e.g., land and buildings at present used as offices might be much more valuable if converted into shop premises, even after allowing for the cost of conversion and for any loss in the nature of disturbance (s. 61 (7)), but the owner might have no present intention of carrying out the conversion. The calculation of the depreciation of land value in such a case for the purpose of a claim is a matter of pure valuation irrespective of the owner's present intentions and a claim should be made if the depreciation in value can be substantiated. The owner's intentions might possibly affect his priority in the list of claimants entitled to payments, but not the calculation of the development value.

Another correspondent has suggested that a successful claim could only be made against the global fund by persons who had paid building value before the 1st July last. This is not so. What was paid for the land in, say 1927, by an owner who still retains it is no criterion of its unrestricted or restricted value and, therefore, of its development value on the 1st July last. The claimant who paid building value, which he has now lost, may well suffer greater hardship than the claimant who bought a farm at agricultural value in 1927 and finds that owing to the expansion of a large town it was worth a great deal more in 1948. The depreciation of the land and consequently the claim in such a case is not affected by what the claimant paid (except that what was paid is naturally evidence of value *at the date of payment*), but the priority in the list of claimants may be.

It should be noted that the Central Land Board's contribution towards valuers' fees is based on the development value agreed between the claimant's valuer and the Board's valuer (it does not apply to arbitration cases, costs in these cases being dealt with by the arbitrator) and will be paid when such value is determined and agreed. Therefore, though a claimant may be low on the priority list and may only receive a small payment he will nevertheless obtain a contribution towards fees based on the whole development value.

The low figure of claims received, quoted by Sir Malcolm Trustram Eve, suggests that many hundreds of owners of individual building plots have made no claims. It is most important that they should be advised to do so, for such persons are often of small means and liable to be particularly hard hit when faced with a heavy development charge. Moreover, they will in many cases be entitled to treatment as preferred claimants.

Finally, it should be emphasised that claims may be made in respect of leasehold interests as well as freehold interests.

R. N. D. H.

Mr. Bernard Kenyon, clerk to the West Riding Council, levelled some sharp criticisms of present-day trends in local government when he spoke recently at a dinner held at Pontefract to celebrate the refounding of King's School 400 years ago.

Mr. E. H. Colley, solicitor, spoke of the need for greater consistency of punishment for motoring offences at a recent joint meeting of the Institute of Automobile Assessors, Midland Centre, and the Birmingham Insurance Institute.

THE LEGAL AID BILL: THE SECOND READING

On 15th December the Commons gave a second reading, without a division, to the Legal Aid Bill. The occasion was, as Mr. J. Silverman said, "a lawyer's day out," but, as he added: "I do not see why lawyers should not have a day out like anybody else." He was, however, answered by one of the lay members, Mr. Driberg, who quoted the *dictum* of Hazlitt that the only thing that gave him any respect for the House of Commons was the contempt felt there for lawyers, and the consumers' viewpoint was appropriately and admirably represented by him, Mr. Harry Wallace and Mrs. Braddock, the latter's contribution being a particularly valuable one.

The Bill received a general welcome from all parts of the House and warm tributes were paid to the voluntary work which the legal profession had done in the past and to the contribution which it has made and will be called upon to make to the new scheme. Nevertheless, weighty criticisms were made of various provisions and it may be of interest to the profession to summarise these, as they are likely to be the main points of detailed discussion at the committee stage, when, as the Government spokesmen indicated, they would welcome efforts to improve the Bill. In one important respect, however, the door seems to have been closed on amendments; owing to the terms of the financial resolution passed after the second reading it will not be possible to amend in committee the maximum limits of income and capital within which legal assistance is to be available. Unless, therefore, the views expressed by a number of members in the debate cause the Government to modify their views, it appears that this important point has been finally settled already.

The major points of criticism were:—

(1) *Oral advice*

The inadequacy of providing only oral advice at the legal aid centres has already been stressed in the columns of this journal (to which reference was made in the debate) and elsewhere, and the same point was taken very strongly by most speakers on both sides of the House. It is, indeed, one upon which all who have had any experience of acting as poor man's lawyers seem to be agreed. The Government reply was that if the assistance were extended to the writing of letters and the conduct of negotiations, the time of interviewing solicitors would be taken up to a greater extent, more solicitors and staff would be needed, and the administrative burden of the scheme would be increased. It was also pointed out that much of the "no man's land" between legal advice and legal aid would be covered by the assistance which could be provided once a legal aid certificate was granted and that possibly some voluntary society could assist in filling the gap.

It is believed that this answer completely fails to appreciate the realities of the situation. It is not denied that in most cases applicants will be able to obtain the help that they need by undergoing the somewhat dilatory process of obtaining a certificate, but if certificates are to be necessary in every case where oral advice alone does not suffice, the number of applications will be so great that the scheme may break down under the strain unnecessarily put upon the certifying committees and the administrative burden will be increased, not minimised. This strain could be taken much more easily at the centres and it is a false economy to deny them the small staff which they would need. Nor is it believed that it would take the interviewing solicitor longer to dictate a letter than to complete the application form or, as is likely to happen in practice, laboriously to write out a letter in long-hand for the applicant to copy. Even the "peripatetic" lawyers who will cover isolated areas on circuit will have some headquarters where they could write letters and conduct simple negotiations, and their resources could scarcely be more inadequate than those of P.M.L.'s at present. Nor is it understood how voluntary bodies can help unless it is suggested that such organisations as the Bentham Committee shall continue to supply unpaid legal advice as at present.

It will be noted that the secretary of The Law Society, in his excellent talk on the Bill (reported at 92 Sol. J. 716 and 728), also dealt with this point and, perhaps incautiously, gave as one reason for the limitation the fact that peripatetic lawyers would have no law books. But if these are needed for writing letters they are equally needed for giving advice, and his remarks suggest that what is really worrying the authorities is the greater risk of actions for negligence if anything is put on paper. If this be the true reason it is a thoroughly unworthy one.

It is suggested that what is needed is the addition of something on the following lines to cl. 6 (2), and it is hoped that such an amendment will be moved in committee:—

"Where in the opinion of the solicitor oral advice alone will be inadequate but it is likely that the matter can be disposed of without resort to litigation, the solicitor may in his discretion conduct such correspondence and negotiations on behalf of the applicant as he shall think fit, provided that he is satisfied that the applicant cannot afford to obtain such assistance in the ordinary way."

(2) *The financial limits*

The principal criticism under this head was not that the limits prescribed in the Bill (disposable income not exceeding £420 and disposable capital not exceeding £500) are inadequate under present conditions and for the beginning of the scheme, but that it is ill-advised to fix these limits in the Bill, so that legislation will be needed to alter them, instead of leaving them to be fixed by regulation. It was cogently argued that changes in the value of money might soon render the limits inadequate but that the delay in securing the passing of an amending Act was likely to be excessive. It is felt that there is great force in this argument. For very many years everyone has realised that the financial limits of the present poor man's procedure are totally inadequate but nothing has been done about it until now.

A number of speakers would have gone further and removed all fixed financial limits so that anyone would be entitled to assistance if the costs exceeded the maximum assessed by the Assistance Board as reasonable for him to contribute. It will be remembered that this was recognised by the Rushcliffe Committee to be the ultimate ideal. Moreover, it was admitted by the Attorney-General himself that eventually something more would have to be done for the hard-pressed middle classes. But it was generally agreed that for the present the proposed limits go as far as is reasonable if too great a strain is not to be imposed on the available machinery. If, however, there are to be future extensions it certainly seems an additional reason for fixing the limits by relatively flexible regulation rather than by legislation.

As previously mentioned, it will, unfortunately, not be possible to discuss this further in committee. This, however, does not mean that the extent of the applicant's contribution out of income and capital is equally final. On this point the Bill merely provides that the contribution *may* include a contribution not greater than half the disposable income over £156 per annum and the whole of the disposable capital over £75. Within these limits the method of assessing the actual contribution is to depend on regulations and it will, therefore, still be possible to meet the criticisms that the present proposals call for too great a contribution, especially in respect of capital. On the other hand it is not clear whether even this point could be raised in committee by moving an amendment to reduce the maximum contributions or whether this too is precluded by the financial resolution.

(3) *Excepted proceedings and tribunals*

It will be remembered that the Rushcliffe Report proposed that legal aid should be available in all proceedings and in all tribunals where legal representation is permissible. On the other hand the Bill proposes to restrict aid to the ordinary law courts (excluding administrative tribunals) and to exclude certain types of proceedings such as actions for defamation,

breach of promise, seduction and enticement. Almost every speaker expressed dissatisfaction with these provisions and even the Government spokesmen admitted that they were logically indefensible and were merely designed to prevent overloading the scheme in its early days.

The main force of the attack was directed to the exclusion of defamation and of administrative tribunals and arbitrations. As regards defamation the general feeling was that while this was not normally a suitable subject for assisted litigation, the necessary screening should be left to the certifying committees and the poor man should not be absolutely precluded from bringing an action to protect his reputation. Further, as Mrs. Braddock pointed out, while there might be a case for refusing aid to the plaintiff it was impossible to justify an absolute refusal of aid to the defendant. If, as was argued, defamation lent itself to blackmailing actions, it was all the more necessary that protection should be available to the defendant.

On the subject of administrative tribunals, the Attorney-General argued that it was not in fact customary for parties to be legally represented. This is certainly true of most tribunals, but by no means of all (town-planning inquiries were quoted as a contrary example) and before all the tribunals there are exceptional cases where representation is needed. This point is daily becoming of increased importance as more matters are removed from the purview of the ordinary courts, a practice of which the new Landlord and Tenant Bill affords an example. The dividing line between the jurisdictions of the county courts under the Rent Restrictions Acts and of the rent tribunals under the Furnished Houses (Rent Control) Act and the new Bill is an entirely arbitrary one and it is anomalous if legal aid is to be available in one case and not in the other. The exclusion of aid in arbitrations seems equally anomalous; if there is an action on a contract with no arbitration clause, aid will be available, but if an exactly similar contract happens to contain an arbitration clause, aid will not be obtainable. The Attorney-General argued that this could be justified in principle because it rested with the parties to decide whether to include an arbitration clause or not. But this answer did not satisfy Sir David Maxwell Fyfe and others, who pointed out that it was only valid where the bargaining powers of the two parties were equal and not, for example, where a proposer for an insurance policy either had to take it in the printed form with an arbitration clause or have no policy at all.

Perhaps the best solution to this problem is that put forward by Mr. Manningham Buller, who suggested that the discretion to grant certificates in such cases should be left not to the normal certifying committees but to the area committees. It is to be hoped that the point will be pressed in committee.

(4) *Local committees*

The constitution and functions of the local and area committees are not in fact dealt with in the Bill but under the scheme prepared by The Law Society. Nevertheless, it is known that it is not proposed to include any lay representation, and this was criticised in the debate. It is thought that the profession as a whole would welcome as much lay co-operation as is possible but would agree that it is vital that membership of any committee called upon to consider applications for aid should be restricted to members of the profession bound by the strict rules of secrecy. Whether this makes it essential to exclude laymen from *area* committees is perhaps arguable. It is clear that many of the functions of such committees could only be carried out by lawyers, but it may be that it would be possible to associate laymen with the running of the scheme at area level provided that they did not sit on sub-committees dealing with purely legal matters or with appeals from certifying committees. At present the only lay element in the scheme is in the Lord Chancellor's Advisory Committee, a body whose functions seem somewhat nebulous.

One speaker in the debate (Mr. Basil Neild) suggested that the assessment of means might also be undertaken by the area or local committees instead of by the National Assistance Board, but happily this suggestion received no support and the secretary of The Law Society has made it clear that this suggestion would not be acceptable to the Society.

(5) *Costs*

The main criticisms under this head were on the lines of those already put forward in these columns: the possible hardship to an unsuccessful assisted litigant and the inevitable hardship to the successful unassisted litigant. The same point was made by Mr. Claud Mullins in a letter to *The Times* of 18th December. There can be no doubt that the only equitable solution is for any excess of the successful party's costs above the maximum assessed contribution of the assisted litigant to be paid out of the Legal Aid Fund.

So far as concerns the position of solicitors and counsel, the legal members seemed to feel a natural reluctance to emphasise too strongly the unfairness of the 15 per cent. reduction. Nor was any reference made to the fact revealed by the secretary of The Law Society that costs are to be taxed on the basis of solicitor and client and not solicitor and *own* client. In most cases, therefore, the full party-and-party costs recovered from the other side will be greater than the reduced solicitor-and-client costs payable to the solicitor and, as Mr. Manningham Buller pointed out, the fund will be profiting at his expense. This lends force to the suggestion made in these columns that the solicitor should be entitled to elect to receive the party-and-party costs. As was pointed out this would avoid at least one taxation and there is no doubt that distaste of taxations will be a very real factor in deterring many practitioners from entering the scheme.

(6) *Criminal cases*

A number of members expressed doubts whether under the new arrangements legal aid would be given sufficiently readily. As the Rushcliffe Committee pointed out, the main reason for dissatisfaction in the past has been not so much the inadequacy of the arrangements themselves as the reluctance of magistrates to allow use to be made of them and the ignorance of the public as to their rights. The speeches on this subject suggested that, notwithstanding the strictures of the Committee and the circulars of the Home Office, the position in this respect was still far from satisfactory and fears were expressed that it would remain so under the new scheme. Mr. J. Silverman took much the same view as The Law Society's secretary and would have dealt with criminal cases on the same lines as civil cases, although he would not apparently have supported the secretary's suggestion that contributions should be obtained from the applicant if his means permitted.

The convincing Government answer to these suggestions was that the time factor made it administratively impossible. It is true that the secretary indicated that arrangements would be made for the grant of emergency certificates by the secretary of the local committee, and this might be possible in criminal cases provided that application was made before the applicant was remanded in custody but hardly otherwise. Moreover, the assessment of means by the Assistance Board would not normally be completed until after the trial and if the applicant had been convicted he would obviously refuse to pay anything! It is therefore submitted that criminal and civil cases necessarily stand on an entirely different footing. In civil cases it is solely a matter for the litigants to decide whether they want legal representation, but in criminal proceedings, as several members pointed out, the public is interested to see that a man is properly defended. In view of these and other differences (e.g., the recovery of costs from the other side) it seems that an improved version of the present arrangements in criminal cases is the best solution that can be devised. Whether these will in fact work satisfactorily rests primarily with local benches.

Several members were also anxious that it should be made abundantly clear that free aid could be granted even though

a man had pleaded guilty and nothing was left to discuss except a plea in mitigation of sentence. The Government promised to insert suitable words in the Bill to cover this point.

(7) *Miscellaneous*

Under this head may be mentioned the fears expressed by some members that the arrangements would prove too dilatory, that frivolous litigation would be encouraged, and that the somewhat ambitious proposals for legal advice to members of the forces (which envisage advice on foreign law) would prove unworkable. All these are matters which concern The Law Society's detailed scheme rather than the skeleton Bill. The Law Society is undoubtedly alive to the dangers, but in the last resort the success or failure of the scheme will depend on the local and area committees and most of all on the secretaries of the local committees who are the king-pins of the whole organisation.

It will therefore be seen that there are a number of important matters which remain for decision before the scheme is finalised and it behoves the profession, which will have to administer it, and which will be greatly affected by it, to consider these matters while there is still time. For this reason, and because the important debate was quite inadequately reported in the daily Press, no apology is offered for having discussed the matter at some length.

L. C. B. G.

Taxation

SPECIAL CONTRIBUTION AND TRUSTS—I

(*References are to the Finance Act, 1948*)

LIABILITY to special contribution arises when an individual's total income in the year 1947–48 exceeded £2,000 and his aggregate investment income exceeded £250. If such income included income arising under a trust, the amount of the contribution attributable thereto is ultimately borne by the capital of the trust.

Total income and aggregate investment income.—Total income and aggregate investment income are ascertained (in the absence of provision in the Act to the contrary) as for sur-tax (s. 48), so that the income derived by a life tenant, annuitant or other recipient of income under a trust, which forms part of his total income for sur-tax, would attract contribution against the capital of the trust, if the figures of that individual's income were such as to justify it. Furthermore, income arising under settlements, which is treated as that of the settlor for sur-tax purposes, is also treated as his for the purpose of the contribution (s. 48), even although he may not be entitled to it according to the trusts of the settlement. For instance, if a parent has transferred assets to trustees on trust for his infant children, the income arising from such assets is deemed to be his (Finance Act, 1936, s. 21); or if a settlor has transferred assets into a settlement for the benefit of other persons, but has reserved to himself a power of revocation, the income is deemed to be his (Finance Act, 1938, s. 38 (2)); or, if income which is being accumulated under a settlement can in any circumstances become applicable for the settlor's benefit, the accumulations are deemed to be his income (Finance Act, 1938, s. 38 (3)); in all these, and in certain other, cases, the income is also deemed to be his for the purpose of the contribution. Periodical payments made in pursuance of a disposition not made for full consideration in money or money's worth, such as payments under a deed of covenant, are not proper deductions from the payer's income for the purpose of the contribution (s. 52 (1) (*b*)), nor do such payments form part of the recipient's income for that purpose.

Payments made out of the capital of a trust.—All payments made out of the capital of a trust which come to the beneficiary in the quality of income, such as the application of capital to make up a deficiency of income to meet an annuity, form part of the beneficiary's total income for sur-tax purposes, and also for the purpose of the contribution, in order to determine whether his total income exceeded £2,000 a year, but such payments do not count as investment income, so that no contribution is payable in respect of them (s. 53 (1)). Not only are payments out of capital so exempt, but also all payments which are attributable otherwise than to income of the trust, such as payments made out of loans raised by the trustees. It is therefore incumbent on beneficiaries who are in receipt of trust income to ascertain whether any of such income arises otherwise than from income of the trust; and if trustees derive income from a second trust, it is similarly incumbent on them to ascertain whether such income arises otherwise than from the income of the second trust, in order that the necessary exemption can be claimed. To ascertain whether payments are made otherwise than out of the income, the income of the trust has to be calculated in accordance with the rules laid down in s. 53 (2). That subsection provides that income of a trust shall be ascertained in like manner as the total income of an individual is ascertained for sur-tax purposes, with the following qualifications:—

(i) No deduction shall be made in respect of any payment made to a beneficiary under the trust or to any person claiming under such a beneficiary. If, therefore, there are two beneficiaries who derive income from a trust, one of whom is a contributor and the other is not, and resort has to be had to capital in order to provide the income to which they are together entitled, the income of the trust, so far as sufficient for the purpose, would be regarded as being appropriated to the contributor and not to the other beneficiary, so that payments to the contributor would be treated as being made out of the capital of the trust only so far as the income, before deducting payments to the other beneficiary, was insufficient to meet his claims. It is not clear how this provision would operate if two (or more) beneficiaries were both contributors, for a literal reading of the subsection would appear to make the income of the trust do double duty, in favour of each contributor, so that if the income were sufficient to pay each of them separately, though not both of them together, each would be regarded as receiving his income out of the income of the trust and not out of capital, though in fact capital had to be applied to satisfy both their claims. An equitable solution, though it is to be doubted whether the subsection justifies this, would be to regard the capital as being applied rateably towards meeting their respective entitlements.

(ii) Income of any description which, for the purpose of the contribution, is to be disregarded in ascertaining aggregate investment income, is also to be disregarded in ascertaining the income of the trust. Income so to be disregarded includes terminable annuities (s. 50 (2)), payments on retirement from business (s. 50 (3)), payments on death of a trader or professional man (s. 50 (3)) and Sched. B assessment (s. 50 (4)).

(iii) Income of any description which, for the purpose of the contribution, is to be treated as the income of any other person, is to be disregarded in ascertaining the income of the trust. Income so to be disregarded includes periodical payments under maintenance and affiliation orders (s. 52 (1) (*a*)), and in pursuance of a disposition not made for full consideration in money or money's worth (s. 52 (1) (*b*)), and income from the occupation of property under a revocable licence not granted for valuable consideration (s. 52 (2)). So, for example, if the income of the trust included annual payments made by the settlor under covenant, such annual payments would not be regarded as the income of the trust nor of the beneficiary who derived his income therefrom.

(iv) Income from another trust, which is shown to the satisfaction of the Special Commissioners to be attributable to payments duly made otherwise than out of the income of that trust, is to be disregarded in ascertaining the income of the first trust (s. 53 (2) (*b*)).

Relief in respect of death duties.—A further relief which may be of use when a contributor has income derived from a trust, or from the estate of a deceased person, is that in respect of unpaid death duties. This relief has no application to the ascertainment of total income, but only to that of aggregate investment income, and in order to obtain it, application must be made to the Special Commissioners before the assessment to contribution has become final. It is provided that if death duties (i.e. estate, succession or legacy duties: s. 64 (2)) in respect of any assets from which the contributor's income for the year 1947–48 arose, in consequence of a death occurring before 5th April, 1948 (s. 64 (1) (*a*))—no matter how long before—and the amount of that income exceeded what it would have been if all death duties payable in consequence of the death had been paid immediately on the occurrence of the death or other event whereby the duties became payable, then the contributor's aggregate investment income is to be reduced to what the Commissioners determine that it would have been had all such duties been paid (s. 64 (1)). This relief is particularly useful in relation to estate and succession duties on real property from which investment income of the year 1947–48 was derived by the contributor, because those duties are not usually payable, and do not carry interest, until one year after the death, and then they may be paid by instalments. For example, if the contributor were tenant for life of settled land, having inherited under a death occurring only a few years prior to 1947–48, it may well be that estate and succession duties were being paid by instalments extending over eight years; had the whole of the estate duty been paid immediately, the value of the settled estate, and accordingly his income therefrom, would have been reduced. For the purpose of the contribution, his investment income from the estate will be treated as being what it would have been had all duties been paid.

Foreign trusts.—Income arising from a "foreign trust" (meaning thereby one the administration of which is governed by the law of any place outside the United Kingdom: s. 56 (9)) does not attract the contribution, whether the contributor receives the income direct or through the intermediary of another trust (s. 56 (7)). If the contributor has paid contribution in respect of income of a foreign trust coming to him through the intermediary of a British trust, he is not entitled to recover from the trustees of the British trust, and the Revenue must repay to him the proportion of the contribution attributable to the income of the foreign trust; if the trustees of the British trust have, nevertheless, repaid the contributor in respect thereof, then the Revenue must refund such amount to the trustees (s. 57 (7) (*b*)).

In the next article the questions of payment, recovery and incidence of the contribution in relation to trust income will be considered.

C. N. B.

Divorce Law and Practice

AN IDEA FOR 1949

THIS is the season for stocktaking and for looking into the future, and a cursory glimpse at what the year 1948 did for the law of divorce, and what we may hope that 1949 will do for it, may not be out of place.

The past year produced a considerable crop of important decisions on matrimonial matters, the majority of which caused no very great public excitement but which all in their greater or lesser way helped to mould and fashion the law of England into something slightly different from what it was before. One is tempted to ask whether any particular trend is to be observed in these cases. In what direction is the law moving? This is not an easy question to answer, but one thing can, perhaps, be said with some truth. In matrimonial matters, as indeed in most of our other affairs, we are trying to settle down into the post-war world and we are gradually developing our law so as to cater for the post-war outlook in matrimonial affairs. The judges continue to administer the law to a considerable extent from the viewpoint of the reasonable spouse, and it is by noticing the way that this task is carried out that we can perceive the way in which public opinion is moving. One example of the trend is shown by the large number of cases which come before the courts where cruelty is alleged and where the acts complained of give rise not to injury to bodily health but injury to mental health. It is possible to see in these cases a greater understanding on the part of the judges of the effects of conduct by spouses which gives rise to mental misery in their partners than there was some years ago. Consider the facts of *Lauder* v. *Lauder* [1948] W.N. 477, where a wife was granted a decree on the ground of cruelty because from time to time her husband was subject to fits or moods of depression for hours or even days on end, during which he would refuse to speak to his wife and completely ignored her even in the presence of third parties. There was evidence, of course, that the wife had suffered in mental health, indeed also in her physical health, but one wonders whether the injury to her mental health was any worse than that suffered by the unsuccessful petitioner in the well-known case of *Russell* v. *Russell* [1897] A.C. 395. Perhaps the judges are interpreting medical evidence of mental illness in a manner that shows a greater understanding for the mental anguish that can be suffered by sensitive people at the hands of a callous husband or wife. Many other instances could be quoted to show how the law is developing in such a way as to give effect to the country's attitude to the moral, social and legal aspects of divorce, but little purpose is served by quoting them; suffice to say that the law has carried on the process during the past year.

But though the great majority of last year's important cases did nothing more than develop their own particular facet of the law, at least three cases have had much public attention focused on them and affect social problems of considerable magnitude. It will be remembered that at the end of 1947 the case of *Baxter* v. *Baxter* (1948), 92 SOL. J. 25, fell to be decided by the House of Lords. The public outcry that followed that decision was considerable, not on account of the reasoning which led to the decision but on account of the effects that that decision would have upon the social life of the country. The tenor of the decision was that if one of the parties to a marriage insists on the use of contraceptives at all times the other spouse cannot have the marriage declared a nullity on the grounds of wilful refusal to consummate the marriage. The strongest argument against this decision is perhaps that its result is to sanction a breach of faith by one of the parties to the marriage if, as might well happen, the parties married in the first place on the express understanding that they should have a family and then after the marriage one of the spouses went back on the promise and refused intercourse except with the use of contraceptives. Many arguments can, moreover, be put forward as to the possible effect the decision may have on the birth rate. Since *Baxter* v. *Baxter* conflicting decisions have been reached on a similar problem where instead of the use of contraceptives the practice of *coitus interruptus* was carried out. Now, whatever the merits of these particular decisions, of three things it is submitted there can be little doubt. First, that it is unseemly, to put it no higher, that the courts should be compelled to consider in case after case the precise effects of one or another form of birth control; secondly, that it is wrong that, in a matter such as this, the courts should have to decide cases in the light of ancient decisions of which by no possible stretch of the imagination can it be said that they were intended to cover the facts of the cases under consideration. Thirdly, and perhaps most important, it

is desirable that these cases should be decided with some uniformity. So long as there is doubt every new type of birth control will in its turn come before the courts for a decision to be made as to its merits as a marriage breaker.

From this it will be seen that, in the opinion of the writer at any rate, there is one branch of the divorce law that needs statutory amendment. That, however, is not all, for at least two other cases have come before the courts in the past year which have left the law in a state in which the desirability of amending legislation is at least arguable.

In *Dunn* v. *Dunn* (1948), 92 SOL. J. 633 (the effects of which case were discussed at 92 SOL. J. 670), it was decided that if a husband and wife cannot agree where the matrimonial home is to be and they live apart as a result of this disagreement, and, further, if neither party has acted unreasonably, then neither party can obtain a divorce on the ground of desertion. As was pointed out in the article mentioned above the effect of this decision is to bring about exactly that state of affairs that the Legislature intended to stop when the Matrimonial Causes Act, 1937, was passed; namely, the situation where a marriage has hopelessly broken down and the parties have lived apart for many years and yet are both without remedy. Is it not time that the Legislature brought the law back from this little digression onto its intended path once more?

The decision of Pearce, J., in *R.E.L.* v. *E.L.* [1948] W.N. 49, brought before the public notice the question of artificial insemination, and as might have been expected public opinion has been roused again. This is a problem that quite clearly may have far-reaching effects on the matrimonial affairs of the country, and unless the position of children born by such means is made clear some hardship will surely follow. This is a matter with which the law may have to concern itself in many ways. Would it not be better to decide now how the problems are to be tackled and legislate to that effect rather than wait for the cases to come before the courts, cases which it is most undesirable, if only for the sake of the parties to them, should be before the courts?

In the light of these cases it must be admitted that the year now past has yielded a harvest of problems that may not prove easy of solution. When in addition one remembers the somewhat illogical technicalities of the rule in *Russell* v. *Russell*, and the fact that the law on matrimonial matters is covered by at least six major statutes, some of which overlap in their provisions (that is not including the Guardianship of Infants Acts) is it not possible that there is a good case for codifying the law relating to matrimonial affairs? To do so would ease the troubles of the practitioner, who now has to find his way about a mass of unrelated legislation, by bringing the law into one comprehensive Act, and would at the same time give the Legislature an opportunity to decide how the problems that have been briefly referred to above may best be solved.

P. W. M.

A Conveyancer's Diary

THE PAST YEAR AND THE CONVEYANCER

IT is the business of those of us who write regularly about any branch of the law to notice anything of interest as it occurs, and I do not know that any useful purpose is served by attempting anything like a compendious review of the events and changes in the law which have affected a conveyancer's practice in the past twelve months. But it has been an eventful year, and a brief record of some of its main features as I see them is perhaps not out of place.

Pride of place in any record of 1948 must go to the Town and Country Planning Act, 1947, which came into force on the 1st July. My interests in 1926 did not include the law of real property, and I have no personal experience of what the practitioner felt about the revolution in conveyancing practice with which he was confronted when the 1925 legislation came into force; but from what I have heard from men who were then in practice they appear to have faced the prospect with a good deal of *sang-froid*. This was not the case with the Act of 1947. This Act, like the legislation of 1925, received the Royal Assent long before it came into force, and advantage was taken of this interval by people in official positions and out to make the profession's skin creep with the most dire prophecies of the upheaval this piece of legislation would produce in the law and practice of conveyancing. The appointed day came and passed, and yet I have seen no evidence of bonfires in Lincoln's Inn, no great rush to get rid of all the forms and precedents which have been used, with a little amendment here and there, for upwards of twenty years, and which with a bit more patching and embroidery will probably do duty for another such period, if not longer. The fact is that the Act of 1947, although producing substantial changes which no practitioner or landowner can ignore, is no more than an extension of a policy which has been pushed forward, with varying degrees of urgency, for a great many years now—the policy of controlling the use to which land can be put, rather than interfering with the ownership of interests in land. It is, of course, true to say that the one cannot be done without in some degree involving the other, but as conveyancing is concerned principally with ownership, and planning legislation with control of use, it is not really surprising that the much-trumpeted revolution of our land law, that some expected on the appointed day, came to nothing.

Much, I suppose, must be forgiven to a new Ministry with no roots of tradition, but a good deal of confusion could have been avoided if the Ministry of Town and Country Planning had issued the more important, at least, of the regulations made under the Act well before the appointed day. Now that these regulations and orders have been made it is possible to see, what some suspected before, that the Act itself is largely an enabling measure. It may be inevitable that legislation of this kind should be enacted in skeleton form, but there is no excuse for putting it into force until sufficient time has been given to see the whole code, statute and regulations, in the round, and form some estimate of its scope accordingly. I venture to say that some of the forms suggested for conveyancing use in connection with the Act would never have been drafted if several months had elapsed between the issue of, say, the General Development Order and the appointed day, instead of the few weeks during which the profession had time to consider their combined consequences. Those who make the law have some duty to those who have to advise on its application.

Another Act which has occupied the attention of the profession to a considerable extent in the past year is the Inheritance (Family Provision) Act, 1938. The number of applications under this Act reaching the court is steadily increasing, and presumably these cases are only a small proportion of the total number on which advice is sought. This is probably only a temporary phenomenon, the result of the war and the separations and disruption of family life which is one of the consequences of war, but as the Act is relatively new and the practice under it not yet fully developed each new reported decision on the measure is of interest. I intend to devote a "Diary" to recent decisions under the Act soon, and no more need be said of this topic now.

There has been a general feeling of surprise that the extremely complex provisions of the enactments dealing with war damage have not led to more litigation. I suppose the reason is that there has so far been so little rebuilding of property damaged in the war, but one would think that owners are now making plans for redevelopment and would wish to settle some of the intricate problems which must have arisen, e.g., between landlord and tenant, well in advance of the day when building can start. From one or two such

cases which have come to my notice I would advise any person likely to be affected by questions of this kind to examine the position without delay.

Very few cases of any importance have been reported on conveyancing points arising purely out of the 1925 legislation. But cases which come in for opinion and advice still show that many draftsmen do not realise the grotesque inconveniences which a settlement taking effect under the Settled Land Act, 1925, can produce when the property settled is small, and the only object of the settlement is the conferment of a single life interest in the property. This is the season for good resolutions, and I hope that everyone who reads this will determine to point out to every testator and settlor the advantages of the machinery of a trust for sale, with such modifications as may be necessary to give any selected beneficiary all the protection required for securing a right to occupy a house or land during a life, over any other form of settlement. The gratitude of unnumbered hosts of trustees will await those who take this simple advice.

I have taken time off to-day to make these personal observations on some of the matters which have struck me, in the course of general practice, during the past year. Before I finish, I have one more thing to say, and that is to thank those of my readers who have written to me with various questions and suggestions. The utility of a column of this kind depends largely on the ability of the writer to treat of those topics which, for one reason or another, are exercising the attention of the profession from time to time. His own views and those of his readers on the choice of subjects are not always necessarily *ad idem*, and suggestions which may narrow any such divergence of views as may exist are always very welcome.

"A B C"

Landlord and Tenant Notebook

CONTROL: OCCUPATION BY LICENSEE

THOUGH the "Notebook" discussed the above topic fairly recently in an article entitled "Home" (92 SOL. J. 571), the occasion for which was the decision in *Langford Property Co., Ltd.* v. *Tureman* (1948), 92 SOL. J. 602, a further increase of knowledge which has been contributed by the judgments in *Robson* v. *Headland* (1948), 64 T.L.R. 596 (C.A.), is worth noting. In particular, light has been thrown on the authority of *Brown* v. *Draper* [1944] K.B. 309 (C.A.), a decision which has been the subject of some bewilderment and the object of some criticism.

It may be useful to recall the facts of and the decision in *Brown* v. *Draper* first. The defendant in that case was a married woman whose husband had ceased to reside with her in the dwelling-house claimed, and whose tenancy of that dwelling-house had been determined by the plaintiff, his landlord. His departure had been occasioned by "unhappy differences." She had instituted proceedings for divorce, and when she applied for alimony he said that his wife and son were in the house, that he was paying the rent (this was untrue) and that they had the use of the furniture. Called as a witness in the action for possession, he said that if his wife took care of the furniture she could continue to have the use of it, and that he would pay the rent of any house he moved to, but also, apparently, that he had "done with" the house claimed.

Reversing the judgment given in the plaintiff's favour by the county court judge, the Court of Appeal pointed out that there were two ways, and only those two ways, in which the statutory tenancy could determine (and this is emphasised by repetition): either the tenant must give up possession or an order for possession must be made against him. Less clearly stated, perhaps, is the conclusion that the defendant's husband had not given up possession. "We do not see on what ground it can be said that a tenant *who remains in possession* can, by a mere statement of his intentions and wishes in the witness-box, in an action to which he is not a party, confer on the court a jurisdiction of which the statute deprives it." The words italicised savour, if I may respectfully say so, of *petitio principi*; but a little later we find: "If he wishes to place himself outside the protection of the Acts without putting the landlord to the necessity of taking proceedings, his proper course is to deliver up possession." This indicates the *ratio decidendi*, though it might be considered not wholly consistent with the later decision in *Brown* v. *Brash* (1948), 64 T.L.R. 266 (C.A.), in which the tenant was separated from his normal surroundings by being lodged in gaol, and the woman who had shared the premises with him had left them. The delivery would indeed be a constructive one.

And as it was in the latter case that much reference was made to the possibility of retaining possession by a licensee, it is easy to understand how, in *Robson* v. *Headland*, the county court judge acted on the assumption that the defendant in *Brown* v. *Draper* owed her ultimate success to the fact that her husband had granted her a licence and never revoked it rather than to the fact that he was not made a party to the action.

The facts of *Robson* v. *Headland* were that a married couple, who became the defendants in the action, moved into a flat in 1941, the husband being tenant and the tenancy quarterly. He went to live elsewhere in 1942, but visited the flat occasionally till 1945, when he was "finally separated" from the second defendant, who petitioned for divorce in 1947 and obtained a decree absolute in the same year. In 1948 the plaintiff landlord terminated the tenancy by notice to quit and sued for possession.

The county court judge, as mentioned, was held to have misread the effect of the decision in *Brown* v. *Draper*, the real gist of which was, it was pointed out, apparent from the following passage (in the judgment of Lord Greene, M.R.): "The protection of the Acts, in our opinion, extends to protect a licensee of the tenant, not because the licensee can claim the protection of the Acts in his or her own right, but because *the tenant is a necessary party* to the proceedings, and no order can be made against the licensee in his absence." In the case before the court, the facts that the male defendant had not resided in the house for three years, that he had no intention of returning to it, and that the female defendant was no longer his wife, justified a finding that he was a non-occupying tenant.

At first sight it may seem difficult to reconcile this decision with *Brown* v. *Brash*, in which, as mentioned, the tenant's difficulties arose from the fact that he had been sentenced to a term of imprisonment. For no proceedings had been taken against him; what had happened was that the landlord had resumed possession and let the dwelling to someone else, and the action was by the ex-tenant (as he was found to be) against purchasers of the freehold, one of whom had gone into possession; the vendor ex-landlord was not joined. But the vital difference was that there was no licensee or alleged licensee on the premises when they were sold; the only evidence of occupation by the plaintiff was the presence of a few sticks of furniture; the *de facto* wife had taken the bulk with her.

Thus, it must not be thought or feared that, as a result of *Brown* v. *Draper* and *Robson* v. *Headland*, a landlord whose statutory tenant ceases to reside in the premises is necessarily unable safely to resume possession without taking proceedings. He may have evidence of abandonment, but the two decisions do make it difficult to advise in cases in which a stranger to the tenancy agreement is found to be in occupation and the grantee's whereabouts are unknown. In the two cases and that of *Brown* v. *Brash*, three relationships were mentioned: married couple, divorced couple, illicit union; and it would appear that if there were no other evidence only a fully divorced husband would confidently be said to have given up

possession by his absence from home. In his judgment in *Robson* v. *Headland*, Tucker, L.J., deliberately reserved for future consideration the position that might arise where the licensee in occupation was at the material time the wife of the tenant.

It may be equally difficult to say whether the wife is the licensee; but on this point Cohen, L.J., who joined in the reservation, may be said to have hinted that the obligations as regards the matrimonial home might confer that status.

R. B.

MOTHERS-IN-LAW

THE recent case of *McGowan* v. *McGowan* [1948] 2 All E.R. 1032, in the Divisional Court, once more raises in an acute form an age-old social problem. During the absence of the husband on service the wife resided with her mother; after the husband's demobilisation the parties went to live together at his parents' house. After a few days the wife left and returned to her mother; the husband remained and assured the wife that the matrimonial home there was still open to her, but she consistently refused to return, on the sole ground that she was not prepared to live in the same house with her mother-in-law. Eventually, without consulting her husband, she found other accommodation, which he decided was unsuitable and to which he refused to go. On these facts the Divisional Court allowed the husband's appeal against the justices' order based on the view that the husband had behaved unreasonably, Hodson, J., remarking that the husband had fulfilled his obligation to provide a reasonable home for his wife, and that "she does not bring her desertion to an end by offering to live with her husband elsewhere than in the place of his choice, unless she can show that the place of his choice is not a reasonable home for him to offer her." Pilcher, J., commented: "The wife still refuses to make any real trial of married life in the only home offered by her husband." The wife had contended that "she could not be expected to return to the home so long as the husband's parents remained in it."

The law was clearly on the husband's side, but many married couples would support the viewpoint of the wife. Not only is it true that "crabbed age and youth cannot live together," but there exists a long tradition of antagonism, not wholly based on prejudice, between a newly wedded husband or wife and the mother of his or her spouse, particularly when they reside together. Until recent years the complaint has usually come from the husband and has been directed against his wife's mother; in cases in the magistrates' courts, in particular, the mother-in-law is frequently described as "interfering," "domineering" or "mischief-making." This view of the relationship was so prevalent that it was at one time a stock joke of every music-hall artiste, in comic song or patter, to refer pathetically to the wife's mother and the havoc she was making in his home. The reason is not far to seek. The wife is the home maker, the arbiter of domestic activities and the purveyor of domestic comfort; these arts she has usually learned from her own mother, to whom she naturally looks for example and precept before and after marriage; from this semi-dependence it is but a short step to those periodical tours of inspection, those suggestions for improvement here and there, those well-intentioned schemes of reorganisation on the part of the elder woman which have been the beginning of the end of many marriages. The generalisation may be ventured that in matriarchal societies like that of the United States, where women are in a minority, the country is virtually ruled by its mothers, and it is an interesting speculation whether this may be a contributory cause of the relative instability of marriage in such societies—the feeble revolt of the male against feminine domination.

The converse, the revolt of the young wife against domination by her husband's mother—though in this country a development of woman's emancipation during comparatively recent times—has deeper underlying causes. The maternal instinct is strong in the vast majority of women, and consciously or unconsciously they tend "to mother" not only their children but also their husbands. Viewed in this light, the problem that arose in *McGowan* v. *McGowan* is a manifestation of what used to be called "the eternal triangle"—two women fighting for possession of one man. Indeed, if Freudian psychology is an accurate guide, the woman's maternal instinct is complemented by the man's "Œdipus complex"; if his wife regards him as a potential child, he himself has regarded—perhaps unconsciously still regards—his own mother as a potential bride. However that may be, the antagonism is there, and it may express itself in a fierce jealousy and possessiveness, on the part of one or both of the women involved, which is a lurking danger to all those spouses who, by reason of poverty or the lack of housing accommodation, are compelled to live with the parents of one of them.

Examples are not lacking in history, fable and legend. Genesis does not explicitly record which of the parents of Rachel was responsible for the scurvy trick played upon her suitor Jacob, who, after he had worked for her father for seven years to win her as a wife, was palmed off with her elder sister, but one suspects the handiwork of Mrs. Laban rather than of Laban himself. On the other hand, it must be admitted that the relations between the gentle Ruth and her mother-in-law Naomi appear to have been exemplary, though the very manner in which they are eulogised in the Biblical story indicates that they were quite exceptional.

In Greek mythology the savage treatment by Aphrodite of Psyche, the young bride of her son Eros, is a terrible indictment of all mothers-in-law, past and present. Protagonists of another point of view, however, might point to the harmonious relationship, so pathetically portrayed in the Iliad, between the aged Hecuba and her daughter-in-law Andromache, the wife of Hector.

Space does not permit more than a brief reference to the wickedness of the cruel Eleanor, the Queen of Henry II, who offered Rosamond the Fair the choice between a cup of poison and a dagger, though here legend is so intertwined with history that it is doubtful in exactly what relationship the parties stood. One thing at all events seems clear—that cohabitation between those who are likely to be placed in a delicate situation of this kind is highly undesirable and, in the interests of a happy marriage, is to be avoided.

A. L. P.

BOOKS RECEIVED

Outlines of Law for Social Workers. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts, and E. L. THACKRAY, LL.M. (Lond.), Solicitor of the Supreme Court and formerly Registrar, Free Legal Advice Centre, Cambridge House. 1948. pp. vii, 323 and (Index) 26. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Statistical Summary of the Income, Expenditure, Work and Costs of One Hundred and Fifty-nine London Hospitals for the Year 1947. 1948. pp. 79. London: King Edward's Hospital Fund for London. 1s. net.

Five Hundred Points in Club Law and Procedure. By R. S. CHAPMAN. Twelfth Edition. 1948. pp. (with Index) 184. London: The Working Men's Club and Institute Union, Ltd. 4s. 6d. net.

Valuation for Compensation and Development Charges. Reprinted from Butterworth's Annotated Legislation Service. By RONALD COLLIER, F.R.I.C.S., F.C.A.E.A.I. 1948. pp. xii and (with Index) 351. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

Development and Compensation. A Guide to the Town and Country Planning Act, 1947. 1948. pp. 118 and (Index) 8. London: The Association of British Chambers of Commerce. 4s. net.

Burke's Loose-Leaf War Legislation. Edited by H. PARRISH, Barrister-at-Law. 1947-48 Vol., Pt. 19. London: Hamish Hamilton (Law Books), Ltd.

Supplement to Cripps on the Agriculture Act, 1947. Including the Text of the Agricultural Holdings Act, 1948. By ANTHONY CRIPPS, D.S.O., T.D., M.A., of the Middle Temple and Midland Circuit, Barrister-at-Law. 1948. pp. viii and (with Index) 154. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Jordan's New Company Law, 1948. By L. J. MORRIS SMITH, of Gray's Inn, Barrister-at-Law. 1948. pp. vi and (with Index) 97. London: Jordan & Sons, Ltd. 7s. 6d. net.

Comparative Tables of Sections of the Companies Acts, 1929, 1947 and 1948. By J. G. HASSELL, F.C.I.S. 1948. pp. 50. London: Jordan & Sons, Ltd. 3s. 6d. net.

The Companies Act, 1948. Edited by MORRIS FINER, of Gray's Inn, Barrister-at-Law. With an Index to the Act by H. A. C. STURGESS, Librarian to the Middle Temple. 1948. pp. viii, 356 and (Index) 106. London: Eyre and Spottiswoode (Publishers), Ltd. 28s. net.

Index to the Companies Act, 1948. By OLIVER SMITH, of Lincoln's Inn, Barrister-at-Law. 1948. pp. 62. London: Jordan & Sons, Ltd. 5s. net.

The Trial of Jesus Christ. By FRANK J. POWELL, Metropolitan Magistrate and a Member of the Middle Temple. 1948. pp. (with Index) 160. London: The Paternoster Press. 6s. net.

The Profits Tax Simplified. By ARTHUR REZ, B.Com. (Lond.), F.R.Econ.S., F.L.A.A. 1948. pp. 26. London: Barkeley Book Co., Ltd. 2s. 6d. net.

Housing Subsidies and Rents. A Study of Local Authorities' Problems. By J. R. JARMAIN, M.A. (Admin.). 1948. pp. viii and (with Index) 294. London: Stevens & Sons, Ltd., 25s. net.

The Secretarial Primer. By H. C. HOLMAN, F.C.I.S. Second Edition. By W. F. TALBOT, F.C.I.S. 1948. pp. vi and (with Index) 369. Cambridge: W. Heffer & Sons, Ltd. 10s. 6d. net.

The Scots Digest. Being a Digest of all the Cases decided in the Supreme Courts of Scotland. October, 1946, to October, 1947. 1948. pp. 48. Edinburgh: W. Green & Son, Ltd. 15s. net.

Accounting Research. Vol. I, No. 1. November, 1948. London: Cambridge University Press. 7s. 6d. net.

The Indian Law Review. Vol. 2, No. 2. 1948. Calcutta: Indian Law Publications, Ltd.

Palmer's Company Guide. "This is the Law" Series. Thirty-sixth Edition. By J. CHARLESWORTH, LL.D., of Lincoln's Inn, Barrister-at-Law. 1948. pp. x and (with Index) 296. London: Stevens & Sons, Ltd. 6s. 6d. net.

The Land and Property Owner's Guide. Series No. 1. Relating to Pts. III, VI and VII of the Town and Country Planning Act, 1947. By GORDON PAYNE, O.B.E., F.R.I.C.S., and A. G. W. BOGGON, LL.B., Deputy Town Clerk, City of Gloucester. 1948. Gloucester: The British Publishing Co., Ltd. 2s. 6d. net.

Burke's Encyclopaedia of War Damage and Compensation. Edited by H. PARRISH, Barrister-at-Law. Supplemental Pts. 36 and 37. 1948. London: Hamish Hamilton (Law Books), Ltd.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Legal Aid and Advice Bill

Sir,—I am venturing to comment on the criticisms of the Legal Aid Bill published in your issue of the 4th December last.

Writing as one who has a fair amount of day-to-day experience of litigation and having had some little experience of legal aid in the services, I do not share the optimism of your contributor that in the vast majority of cases where a legal adviser can write a letter or two the claim can be settled satisfactorily with very little trouble. My own experience is that negotiations, unless supported by the sanction of a writ, will never yield the full settlement value of any claim. Operating legal aid in the services, I soon realised that this was the position, and thereafter immediately dealt with cases either by completing the necessary application for a poor persons' certificate or by arranging for a local solicitor to take the case.

It is clear from the Legal Aid and Advice Bill and the speech made by the Attorney-General in moving the second reading that legal aid is not to be restricted to the actual processes of litigation. The Attorney-General said: "It includes the preliminary steps—the letters which are written, the negotiations which take place perhaps with a view to avoiding the litigation—but in the Bill it is used to cover those cases where litigation is contemplated and may become necessary."

I would suggest that members of our profession should be slow to urge that the powers of the legal adviser at advice centres are increased. On the basis proposed, most solicitors will be only too pleased that these small matters should be dealt with in the way suggested, but once the door is opened to salaried solicitors of The Law Society, or the State, doing more than giving preliminary advice, the door will be wide open to any future scheme for nationalisation. The same can be said of the proposal that a divorce department of The Law Society should undertake divorce cases where the assisted person is unable to afford more than £10. Further, this proposal undermines a principle of the Act which is to ensure that the assisted litigant can choose his own solicitor. If this part of the scheme goes through, there will be one system of legal aid for the poor and another less satisfactory system for the very poor.

Peterborough. S. J. GREEN, *Hon. Secretary*,
Peterborough and District Law Society.

Sir,—We would like to offer the following observations upon the Legal Aid and Advice Bill, 1948:—

1. (*a*) It is provided that a solicitor shall be paid in respect of proceedings in the Supreme Court and the House of Lords 85 per cent. of taxed costs. The Rushcliffe Report estimated that the 15 per cent. reduction represents half of the profit costs. We would estimate that in fact the 15 per cent. reduction would on average represent a good deal more than half of normal profit costs, bearing in mind the following considerations:—

(i) In many instances solicitors have, as a matter of practice, to incur disbursements such, for example, as for expert witnesses, which are not fully allowed on taxation, the taxing officer taking the view that a higher fee was paid than was necessary. In such case the solicitor will have to bear the loss himself.

(ii) The solicitor will, under the scheme, be bound in every case to undergo the considerable trouble of drawing, engrossing and taxing a detailed bill without fee. If one employs, as is not infrequently the case, an outside firm for this purpose, the solicitor will be out of pocket in respect of their fees.

(iii) One has always in practice to perform items of work which are not allowed at all on taxation, such as formal letters, courtesy attendances, etc.

(*b*) No provision is made for payment of normal remuneration even where, as the result of the solicitor's efforts, substantial sums of money are recovered for the "assisted person." A solicitor may, for example, recover two or three thousand pounds for an assisted person in a running down action. He will still receive only 85 per cent. of taxed costs, although the client is now well in a position to pay normal fees. One appreciates the objection to the remuneration being dependent even partially on the result, but which is the lesser evil?

(*c*) Cases can be visualised where the solicitor will receive even less than taxed party and party costs from the opposing party. This would occur where taxed party and party costs exceed 85 per cent. of a taxed solicitor and client bill.

If the Government is inviting the co-operation of the legal profession upon a charitable footing one can at least understand the proposal to pay cut fees, although we ourselves would, for reasons too lengthy to go into here, regard the invitation as one which ought not even to be extended. The Bill, however, is not put forward upon the footing that its efficacy depends upon the charitable contribution of lawyers, but as a great social measure (which it is), the expense of which will be borne by the Government, "assisted persons" and unsuccessful opposing parties. It may well be asked then, upon what rational footing is the proposal made that solicitors should work for considerably cut fees? Why this extraordinary meanness? Litigation is already poorly paid, so far at any rate as concerns the solicitors' branch of the profession, and we think it wrong that solicitors should be invited to make further cuts. But if the invitation is made, we should like to see it more clearly recognised that it involves nothing less than substantial charity on the part of the profession.

2. Section 2 (2) (*e*) provides that the liability of an "assisted person" "by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay."

If the Government is so anxious to protect the "assisted person" against successful parties' claims for costs, it would, we suggest, be more seemly to do so by way of indemnity out of State funds rather than at the expense of the successful other party. It is easy to be charitable at other people's expense.

We shall be interested to learn the views of other readers upon the above matters.

London, E.C.1. "S."

NOTES OF CASES

KING'S BENCH DIVISION

EMERGENCY POWERS: POST-WAR CIRCUMSTANCES: FUEL CUTS: ELECTRIC LOAD SHEDDING: SHORTAGE OF SUPPLIES: BURDEN OF PROOF

National Provincial Bank, Ltd. *v.* Meyrick Redmayne Farms, Ltd.; National Provincial Bank, Ltd. *v.* M.R. Driers, Ltd.

Wynn Parry, J. 30th November, 1948

By these applications a bank asked for leave under the Courts (Emergency Powers) Act, 1943, s. 1, to appoint a receiver in respect of two mortgages and floating charges granted by the respondent companies respectively on 28th October, 1946. The first respondent company carried on a farming business over an area of approximately 3,000 acres, half of it being under lucerne, a high protein feed for livestock. The second respondent company intended to build and operate an artificial drying plant for the drying of the lucerne produced by the first respondent company, but it experienced considerable difficulties; the drying plant which was ordered in 1944 with a view to being ready for operation in 1945, was only partly delivered in 1946 and was not working to full capacity until the second half of 1948. The respondent companies alleged that the surplus revenue, which they anticipated, did not materialise in consequence of those events which in part were due to difficulties in obtaining the necessary fuel permits, and the occurrence of fuel cuts, electric load shedding and shortage of supplies. It was argued on behalf of the two respondent companies that the inability to meet their obligations to the mortgagee bank was caused by these events which were circumstances directly or indirectly attributable to the war, and that the applications should, therefore, be refused. The Courts (Emergency Powers) Act, 1943, s. 1 (4), provides: "If, on any application for leave . . . the appropriate court is of opinion that the person liable to . . . pay . . . is unable immediately to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged, the court may . . . refuse leave . . ." Section 2 (3) provides: "Where an application is made . . . for leave . . . the court shall not . . . exercise its powers under subs. (4) [of s. 1] unless it is satisfied that the circumstances referred to in that subsection arose after the contract was made."

WYNN PARRY, J., said that (1) the relevant date under s. 2 (3) was the date of the mortgages and charges, viz., 28th October, 1946; (2) as regards the circumstances that took place after that date, the onus was on the respondent companies to prove that those circumstances were directly or indirectly attributable to war. At no time in the chain of evidence did the onus shift. If hostilities had still continued the court would assume that the circumstances relied upon were due to the war and thus hold that the onus of proof had been discharged, but once hostilities had ceased, and *a fortiori*, the more distant the date when they ceased, the less easy was the onus of proof. The cessation of hostilities introduced a new element which must be taken into consideration because clearly a subsequent inability to pay might be due either to the war or a cause supervening since the cessation of hostilities. The onus increased in degree and, in increasing with the passage of time, remained wholly on the respondents. The circumstances relied upon by the respondent companies were ambiguous and left the court to speculate whether they were or were not attributable to the war, and that was the fatal flaw in the respondents' argument. On the evidence before him, his lordship had come to the conclusion that the respondents had failed to discharge the onus of proof which was on them, and he proposed to grant the relief for which the mortgagee bank was asking.

APPEARANCES: *P. J. Sykes* (*Wilde, Sapte & Co.*); *Goff* (*Brown, Turner, Compton Carr & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

UNDER this heading it is hoped, during 1949, to present week by week a review of the events likely to be of importance to the profession. Parliamentary news, including the progress of Bills, matters of practical legal interest raised in debates and questions to Ministers, will be digested in a form adapted to easy reference. The more important Statutory Instruments of the week will, likewise, be noted and, where necessary, briefly described. Information will also be given of other Government publications of all kinds—circulars, reports, memoranda, etc.—whenever their subject-matter is of interest to the practitioner.

As a corollary to the introduction of "Survey of the Week," two features well known to readers, "Parliamentary News" and "Recent Legislation", will henceforth disappear. By this means all information relating to the legislation of the week will be collected conveniently in one place for the busy reader.

In this first issue of the New Year the Christmas recess leaves us with little to report. Government Departments, like Parliament, have been inactive during the past week, and the Statutory Instruments of 1949 have not yet begun their inevitable flow. It may, therefore, be useful if we survey briefly some of the highlights of recent weeks in Parliament.

The sitting concluded on 17th December has seen the introduction of a number of measures affecting the legal professions. The LEGAL AID AND ADVICE BILL has been explained and criticised in earlier issues of this journal, and the debate on the Second Reading gave lawyers in the House of Commons an opportunity both to welcome the bill and to point out a number of defects and possible difficulties in administration. In view of its importance the debate is summarised in some detail elsewhere in this issue.

The LANDLORD AND TENANT (RENT CONTROL) BILL was introduced on the last day of the sitting. It will enable tenants of houses or parts of houses first let since 14th August, 1945, to apply to tribunals under the Furnished Houses (Rent Control) Act, 1946 (additional tribunals will be set up where necessary), for the determination of the "reasonable rent" which will thereupon become the standard rent of the house or part—provision being made to deal with cases where the whole already has a standard rent. Where a premium was taken on such letting it will be recoverable by the tenant in the form of deductions from whatever is fixed as the reasonable rent. There are also provisions that the 1946 Act shall apply notwithstanding that the tenant shares a part of the house with his landlord, and that the sharing of part of the house with other persons shall not prevent the principal Acts applying, thus reversing the decision in *Neale* v. *Del Soto*. The tenant is also protected from termination or modification of his right to use shared accommodation, except where that might be done under the terms of the tenancy and by order of the county court. The problem of the inadequacy of the "three months' security of tenure" provision in the 1946 Act is dealt with by providing that the tribunals may grant successive periods of three months' security.

Several other bills introduced were of interest to practitioners. The JURIES BILL abolishes, from the end of September, 1949, special juries (except City of London special juries in commercial list causes), and provides travelling and subsistence allowances for jurors, and compensation for loss of earnings and "additional expenses necessarily incurred by service." Similar provisions are made for Scotland and the privilege there of trial by a majority of "landed persons" is also abolished.

The LEGAL AID AND SOLICITORS (SCOTLAND) BILL makes provision for the establishment of a single Law Society for Scotland with power to issue practising certificates and to conduct disciplinary proceedings. This society is to set up the machinery for a legal aid scheme similar to that to be set up in England. In introducing the Bill the Solicitor-General for Scotland, Mr. Douglas Johnston, mentioned that Scotland had had a legal aid scheme for many hundreds of years under an Act of the Scots Parliament passed in 1424, which enacts that the judge, on request, shall appoint "some loyal and wise advocate to follow the poor person's cause" or else "the party complaining shall have recourse to the King who shall rigorously punish such judge" (an early precedent for an appeal from a refusal to grant legal aid).

The WAR DAMAGE (PUBLIC UTILITY UNDERTAKINGS, ETC.) BILL will bring into the War Damage Scheme public utility undertakings and those rated by reference to accounts, receipts, profits or output, which were excluded from the scheme under the 1941 and 1943 Acts.

The PENSIONS APPEALS TRIBUNALS BILL will enable persons who in peace time are refused death or disability pensions to appeal to the tribunals hitherto available only to war claimants. A further appeal is available to the High Court on a point of law. A right of appeal to the tribunals is also given in those cases where the Minister has made an *ex gratia* award, even though the claim had been rejected by a non-statutory tribunal.

The LICENSING BILL provides, *inter alia*, that the licensing justices and the confirming and compensation authorities for county petty sessional divisions and county boroughs shall in all cases be committees of the whole body of justices or quarter sessions as the case may be, and also modifies the former general disqualification under s. 40 of the Licensing (Consolidation) Act, 1910, of justices with shareholdings in concerns engaged in the liquor trade. The provisions of Pt. VI of the Local Government Act, 1948, dealing with allowances to members of local authorities are extended to licensing courts.

The RAILWAY AND CANAL COMMISSION (ABOLITION) BILL abolishes the Commission and transfers its functions to the High Court and the Court of Session in Scotland.

The SOLICITORS AND PUBLIC NOTARIES BILL will come into effect on 1st November, 1949, and, among its other effects, will abolish the necessity of stamping practising certificates.

Question-time has brought a number of answers of legal interest. Mr. Chuter Ede firmly refused to make any suggestion to the courts for the standardisation of sentences in black-market cases. Mr. Woodburn hoped soon to introduce legislation providing for the reciprocal enforcement of maintenance and aliment orders between Scotland and England—a matter which has long needed attention since such orders fall outside the provisions of the Judgment Extensions Act, 1868, the Administration of Justice Act, 1920, and the Foreign Judgments (Reciprocal Enforcement) Act, 1933.

Mr. Jay would give no assurance that owners selling plots of land at existing use value would receive the full amount of compensation assessed under Pt. VI of the Town and Country Planning Act, 1947, and recommended that they should read the pamphlet available from the Central Land Board entitled "House 1." On another occasion "House 2" was recommended to those who had bought, before 1st July, 1948, plots of land for house building. During the sitting there has been a good deal of pressure upon the War Damage Commission to reconsider claims rejected solely because they were filed too late. Mr. Glenvil Hall pointed out to Mrs. Braddock, however, that the Commission is an independent statutory body in no way subject to his jurisdiction. This was a matter for the Commission's discretion, though he would certainly invite its attention to what had been said.

Mr. Chuter Ede announced that a Royal Commission would be set up to consider possible alternatives to capital punishment, and what changes would be necessary in the law and the prison system if the death penalty were abolished.

As a result of comments by Judge Tudor Rees at the Brentford County Court, it was announced that the Attorney-General is considering whether legitimacy petitions under the Legitimacy Act, 1926, might not be heard *in camera*. (The judge had deplored the necessity for an old lady to make public disclosures of the facts.) He was doubtful, however, whether legislation was desirable to preserve the legitimacy of children whose parents' marriage had subsequently been declared void, or to deal with the legitimacy of children born as a result of artificial insemination, though the position would be kept under review. Mr. Bevan said that no instructions had been sent to Registrars of Births as to births resulting from A.I. (D.) (artificial insemination by a donor). If the informant could not give the father's name, he said, that column was left blank on the birth certificate, but he understood that this had no effect on the child's legitimacy.

Mr. Bevan also announced that a Bill would soon be introduced to amend the National Health Service Act, 1946, in the manner recommended by the Committee on Medical Partnerships.

NOTES AND NEWS

Professional Announcement

Mr. P. W. T. WARREN, D.S.C., has joined the firm of Warren and Warren, 31, Bedford Row, London, W.C.1.

Honours and Appointments

The Benchers of the Honourable Society of the Middle Temple have, with the approval of Her Majesty, elected Sir HENRY MACGEAGH, K.C.B., K.B.E., K.C., to be Deputy Treasurer of the Society for 1949, during the Treasurership of Her Majesty the Queen.

The President of the Probate, Divorce and Admiralty Division has appointed Mr. HORACE ALVAREZ DE COURCY PEREIRA, barrister-at-law, one of the Registrars of the Principal Probate Registry, to be Senior Registrar of the Principal Probate Registry, in place of the late Sir Henry Norbury.

Among those appointed by the Lord Chancellor to the Tribunal established by regulations under s. 25 of the Coal Industry Nationalisation Act, 1946, are: Mr. H. A. H. CHRISTIE, K.C., Mr. J. N. GRAY, K.C., Mr. G. R. UPJOHN, K.C. (Chairmen's Panel); Mr. R. F. C. ROACH, M.B.E. (Registrar).

The Colonial Office announce the following appointments: Mr. W. D. CAROW to be Puisne Judge, Fiji; Mr. K. S. STOBY to be Magistrate, Nigeria; and Mr. H. J. L. BOSTON to be Police Magistrate, Sierra Leone.

Mr. B. E. TOWNEND, Deputy Town Clerk to Salisbury City Council, has been appointed Town Clerk of Ilkley. He was admitted in 1938.

Mr. S. RUTHERFORD, solicitor, of Morpeth, has been appointed Town Clerk of Morpeth. He was admitted in 1939.

Mr. C. G. BUTCHER, of Rotherham, has been appointed assistant solicitor to Stockport Corporation.

Mr. F. F. HADDOCK, solicitor, has been appointed coroner for Horsham and Worthing district.

Mr. J. N. MARTIN, Clerk to the Hereford City Magistrates' Court, has been appointed Magistrates' Clerk to the Bench at Royal Leamington Spa and the Petty Sessional Division of Coventry. He was admitted in 1939.

Mr. ERIC E. MORGAN, a partner in the firm of G. H. Morgan and Sons, of Belmont, Shrewsbury, has been appointed to the Midland Regional Advisory Council of the British Broadcasting Corporation for a further term of four years.

Mr. HORACE WYNN, Clerk to Martley (Worcs.) Rural District Council, has been appointed Clerk to Newmarket Rural District Council, as from 1st March, 1949.

Mr. E. P. MERRITT has been appointed assistant solicitor (general and conveyancing), Railway Executive, Eastern Region. He was admitted in 1930.

Mr. J. D. TATTERSALL has been appointed assistant regional solicitor, Railway Executive, North Eastern Region, York. He was admitted in 1938.

Personal Notes

Mr. O. B. Wallis, solicitor, of Hereford, has been elected President of the Hereford Naturalists' Field Club.

Mr. K. R. Thomas, clerk to the Maidenhead magistrates, has joined the Maidenhead District Farming Club.

Members of the staff of Messrs. Ratcliffe & Duce, solicitors, of Reading, met recently for dinner in honour of Mr. Frank Exler, managing clerk, who has completed forty years' service with the firm. A television receiver was presented to Mr. Exler.

Mr. Eric Arnison, solicitor, of Penrith, recently addressed a meeting of the local branch of Toc H on the history and development of rock climbing, with particular reference to the Lake District. Mr. Arnison is an experienced climber and in 1947 led a guideless party up the Matterhorn.

Mr. Victor Grunhut, solicitor, of South Shields, has been made President of Newcastle Incorporated Law Society for 1949. He is the sixth solicitor from South Shields to gain this honour. Mr. Grunhut is clerk to the Magistrates of South Shields County and Hebburn division and was admitted in 1893.

Miscellaneous

A Brains Trust will give considered answers to questions arising under the Town and Country Planning Act, 1947, to a meeting of members of the Chartered Auctioneers' and Estate Agents' Institute, at 29, Lincoln's Inn Fields, London, W.C.2, on Thursday, 6th January, 1949, at 6 p.m.

The Matrimonial Causes (Amendment) (No. 2) Rules, 1948, provide that Bournemouth and Kingston-upon-Hull shall be Divorce Towns, and that accordingly in Appendix III to the Matrimonial Causes Rules, 1947, the word "Bournemouth" shall be inserted after the word "Bolton" and the word "Kingston-upon-Hull" after the words "Ipswich (A)."

Sir Cecil J. B. Hurst, K.C., was presented on 20th December, 1948, with his portrait by the Grotius Society at a reception held

in the Middle Temple Hall (by permission of the Treasurer and Masters of the Bench of the Middle Temple). Those present included: The Chinese Ambassador, the Lord Chancellor, the Bishop of Chichester, Lord Porter, Lord and Lady du Parcq, Lord Justice Cohen and Lady Cohen, Sir Arnold D. McNair (President of the Society), Sir Edward Tindal Atkinson, Sir Eric Beckett, K.C., and Lady Beckett, Sir Lynden Macassey, K.C., and Lady Macassey, Miss Hurst, Colonel Richard Hurst, The Rev. John and Mrs. Hurst, Mr. W. Craig Henderson, K.C., and Mrs. Craig Henderson, Judge Trevor Hunter, K.C., and Mrs. Trevor Hunter, Dr. C. J. Colombos (hon. secretary), Mr. Kenneth Carpmael, K.C. (hon. treasurer), Mr. William Dring, A.R.A., Dr. Eric Fletcher, M.P., and Mrs. Fletcher, Professor G. C. Cheshire, Mr. and Mrs. T. G. Lund, Professor H. C. Gutteridge, K.C., Miss Gutteridge, Mr. and Mrs. Arthur Guinness, Mr. Richard O'Sullivan, K.C., and Mrs. O'Sullivan, Dr. V. R. Idelson, K.C., and Mrs. Idelson, Mr. Arthur Jaffé, Mr. W. Harvey Moore, K.C., and Mrs. Harvey Moore, Mr. and Mrs. William Latey, and Professor R. Kuratowski.

THE TRANSPORT ARBITRATION TRIBUNAL

Practice Direction No. 1

Confirmation of Agreements under s. 108 of the Transport Act, 1947

The Transport Arbitration Tribunal has given the following direction with regard to applications to the tribunal for the confirmation of agreements as to the amount of compensation under s. 108 of the Transport Act, 1947:—

1. Three copies only of the originating application and statement required by r. 18 and the original and two copies only of the agreement need be left at the office in the first instance. The clerk will serve one copy of each upon the Minister.

2. The statement may be served with the originating application, and in that case the endorsement upon the originating application required by r. 16 may be in the following terms:—

"To the respondent (naming the person served).

"A statement setting out the facts alleged by and contentions of the applicant is served herewith; your attention is drawn to the endorsement thereon."

3. Subject to the power of the tribunal under r. 33 to require the personal attendance of any deponent for examination and cross-examination evidence in support of the application will normally be given by affidavit. The original and one copy of any such affidavit and the original and one copy of any exhibit thereto shall be filed at the office by the party on whose behalf such affidavit is tendered, and such party shall give notice of the filing thereof to every other party and to the Minister, and shall, if required by any other party, or the Minister, furnish to such other party or the Minister, as the case may be, a copy of any affidavit or exhibit so filed upon the usual terms as to payment therefor.

4. If a respondent to an application does not wish to deny the genuineness of the agreement or any of the facts alleged in the statement or to object on other grounds to the confirmation of the agreement, he need not serve an answer under r. 19, but in lieu thereof may serve the applicant with a notice specifying an address at which any notice, order or other document in the proceedings may be served upon him, and send three copies of such notice to the clerk, who will serve one copy upon the Minister.

5. Subject to the provisions of r. 17 (as to adding as respondents persons appearing to be directly interested) in a case where no answer objecting to the confirmation of the agreement has been served within the period of fourteen days specified by the Rules or any duly granted extension thereof, and where the tribunal is satisfied upon an examination of the evidence filed in support of the application that the agreement is one which the tribunal may properly confirm, the clerk will by notice in writing inform the Minister and all parties to the application, who have either by their statement or answer or otherwise notified to the office in writing an address for service, that the tribunal is so satisfied and fix a day, not being less than seven days after service of such notice, when the application will be set down for confirmation by the tribunal.

6. The attendance or representation of a respondent before the tribunal on the day specified in a notice issued under the preceding paragraph of this direction will not be necessary. The tribunal will proceed to confirm the agreement in pursuance of the notice, unless, upon the application of any party or other person interested, the hearing is adjourned or leave is given to apply under r. 25 for an order extending the time in which an answer may be served. Such leave will only be granted in exceptional circumstances.

7. In a case where an answer objecting to the confirmation of the agreement has been duly served or where the tribunal is not satisfied upon the evidence filed in support of the application that the agreement is one that the tribunal may properly confirm, the clerk will by notice require the applicant to apply to the tribunal for directions. Upon receipt of such a notice the applicant shall obtain an appointment for such purpose from the clerk and give notice thereof to all parties as required by r. 25 (1).

8. The Rules referred to in this direction are the Transport Arbitration Tribunal Rules, 1947, and expressions used in this direction (if not inconsistent with the context or subject-matter) have the same meaning as in the Rules.

9. This direction does not apply to proceedings which under Pt. VIII of the Act are to be treated as Scottish proceedings.

8th December, 1948. J. A. Armstrong,
Clerk to the Tribunal.

CORRECTION

We regret that in our report of *Swanson* v. *Forton* (92 Sol. J. 731) the appellant's name was incorrectly given as "Swanton."

SOCIETIES

The Preston Law Debating Society, of which Mr. J. Dewhurst, J.P., is the President, is gradually regaining its feet. A confident outlook for the coming year is expressed in the committee's report for the session ending 31st August, 1948, the first report since the disbanding of the Society in 1939. The Society has been restored to activity mainly by the efforts of Mr. E. C. Dickson, and also of Mr. W. G. Wallwork, the honorary auditor. It is proposed to re-introduce the annual presentation of the W. Bramwell Speaking Prize and the one for the Debating Society Prize. Since the last report many books have been added to the library, twenty-eight being purchased last year. During the session one successful Law Notes Moot was held. An experiment in May to hold a "summer moot" was not a great success, due to the low attendance of student members.

OBITUARY

Mr. C. C. MAUGHAN

Mr. Cyril C. Maughan, solicitor, of Margate, died on 1st December, aged seventy-six. He was a solicitor for more than fifty years and had been Magistrates' Clerk at Margate for thirty-two years. He was admitted in 1897.

Mr. G. R. SILLS

Mr. George R. Sills, solicitor, of Lincoln, died on 16th December, aged seventy-three. He was admitted in 1898 and was clerk to the Wragby Justices from 1920 to 1942.

SOLUTION TO "CHRISTMAS CROSS-EXAMINATION"

[The crossword-puzzle appeared at 92 Sol. J. 730.]

Across: 1. Sidesman; 4. Picnic; 9. Eva; 10. Detinue; 11. Yea; 12. Irons; 14. Sa; 16. Sprung; 17. Trope; 18. Let; 19. It; 20. Advent; 22. Emption; 24. Pat; 25. Era; 27–29. Aeroplane to Rye; 30. Ichor; 31. Tau; 32. Truss; 34. Gusts; 35. Meekens.

Down: 1. Special pleading; 2. Dean of the Arches; 3. Ad testificandum; 5. In expeditione; 6. Noyau; 7. Charge to the jury; 8. Ink; 13. Sin; 15. Art; 16. Spa; 21. Euphrates; 23. Naevose; 26. Re; 28. Ports; 33. Se.

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